The Solicitors' Journal

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CURRENT TOPICS

The Budget: Further Points of Interest

SINCE our brief note in last week's issue it has been possible to study more closely the Chancellor's Budget proposals, some of the most interesting of which have escaped attention in the daily Press. Thus, for example, Budget Resolution No. 20 reverses the effect of the House of Lords' decision in *I.R.C.* v. *Wesleyan and General Assurance Company* (1948), 92 SOL. J. 193, by providing that loans made against a life policy of the kind there in question are to be treated forthwith as annual payments within Case III of Sched. D. Again, apart from the more revolutionary proposals in regard to death duties, to which we referred last week, the liability to estate duty of property abroad has had to be redefined in consequence of the intended abolition of the legacy and succession duties. Under s. 2 (2) of the Finance Act, 1894, liability of such property to one or other of those duties was the test by which liability to estate duty was established. Resolution No. 25 indicates that the test will in future be the "proper law regulating the devolution of the property or the disposition under or by reason of which it passes." If the "proper law" is shown to be the law neither of England nor of Scotland, and certain other conditions to be laid down in the Finance Bill are satisfied, then the property will escape liability to estate duty. Another minor change proposed is the abolition of the special treatment hitherto accorded to land and chattels settled inalienably by statute or royal grant (Finance Act, 1894, s. 5 (5)); this will in future be chargeable with estate duty in the same way as other settled property.

Criminal Reports

A LETTER in *The Times* of 30th March, from Messrs. J. O'HALLORAN and J. D. REDDICK, of St. Edmund's Hall, Oxford, suggests that newspapers and other news services should refrain from giving the name of anyone accused in the criminal courts until his conviction, and should not give it at all if he is acquitted. The reason put forward is that an acquittal does not in fact remove the "disgrace" of having been tried in a criminal court. "Even if someone else is accused and convicted of the crime" the writers stated, "there is still a certain stigma attached to a man having been through the police courts. But if, as can happen, no one else is tried, the public will be even more distrustful." Possibly the reform would be salutary, but there would always be the objection that justice loses something if the full light of publicity is in any way diminished. And how would the law reports fare under such a reform? Would there be an abundance of new cases entitled *R.* v. *X.* for lawyers to sort out?

Official Searches of the Index Map in Non-Compulsory Areas

THE Chief Land Registrar has announced that, acting under the discretion vested in him by Abatement No. 9 of the Land Registration Fee Order, 1930, he has now remitted the fee prescribed by para. XII (6) (*a*) for an official search of the index map in non-compulsory areas. It will be recalled that almost exactly a year ago the comparable fee in respect of compulsory areas was similarly remitted (see 92 SOL. J. 219).

Bankers' Drafts in the Post

THE *Law Society's Gazette* for April, 1949, refers to a growing practice of sending crossed bankers' drafts by registered post, particularly on completion of sales and purchases where the amount is small. The drafts, it is said, are sometimes sent direct to the vendor's solicitors and sometimes to another firm of solicitors as agents for completion. The opinion is expressed that in the event of loss the solicitor could not be held guilty of professional negligence, in the unlikely event of his client suffering financially thereby. This, it is said, would afford small comfort to the client, who might be faced with having to pay the money twice. The attention of readers is drawn to the advisability of taking out a special insurance cover against the risk of any loss resulting to themselves or their clients.

Compulsory Purchase of Land Regulations, 1949

NEW regulations under the Acquisition of Land (Authorisation Procedure) Act, 1946 (S.I. 1949 No. 507), as already briefly noted in our columns, revoke and are in effect a revised edition of the Compulsory Purchase of Land Regulations, 1946, and their amending regulations of 1947. Made on the 22nd March, 1949, they were necessitated by the passing of the Town and Country Planning Act, 1947, and the additional forms now prescribed are for use where expedited completion under s. 39 of that Act is sought. The existing forms have been revised to meet certain provisions in the 1947 Act, and also as suggested by experience of the working of the 1946 Act. A Ministry of Health circular to local authorities (23/49, 31st March) states that the sections of the Town and Country Planning Act, 1947, which empower

the compulsory acquisition of land by local authorities, viz., ss. 37, 38 and 41, provide that the Acquisition of Land (Authorisation Procedure) Act, 1946, shall apply to all acquisitions under those sections. The forms prescribed are complicated and the Minister adds that the reason for the inclusion of much of the matter of these forms has been to ensure that persons interested are aware of the powers and intentions of the purchasing authority and also of their own statutory rights.

Admission to Housing Lists

THE importance of local authorities' housing lists needs no emphasising to solicitors with experience of possession cases in county courts. A sub-committee of the Central Housing Advisory Committee, whose report was issued this week by the Ministry of Health, state that "a man's need for a house is not affected by local authority boundaries or by the length of time he has lived or worked within them," and they look forward to the abolition of restrictions on admission to the waiting-list from which tenants are selected (H.M. Stationery Office, price 6d.). As a first step, they recommend that (1) local authorities should immediately reduce their restrictions to a uniform level by accepting an application from any person who, at the date of application, has lived in the district for one year or more or is employed or to be employed there; (2) once the applicant is on the waiting-list, his prospects of obtaining accommodation should not be prejudiced because excessive importance is attached to long residence. The sub-committee refer to the factors, such as overcrowding, ill-health, and lack of a separate home, which give rise to housing need, and recommend that other factors, such as length of residence, and war service, which do not affect an applicant's living conditions, should be taken into account only to distinguish between applicants in *equal need*. They give a general indication of their own assessment of the various factors in a "sample points scheme," and in particular propose a standard for the measurement of overcrowding which is more liberal than the statutory measure. The committee think that local authorities should be particularly careful to ensure that no advantage accrues to any applicant who deliberately worsens his living conditions in the hope of jumping the queue. In transfers and exchanges to new or vacated houses, and exchanges of houses between tenants, the sub-committee see many opportunities for satisfying housing needs without recourse to additional or special building.

Central Land Board: Extension of Time for Certain Minerals Claims

THE Central Land Board have announced that a regulation will be made extending the time limit for making claims in respect of (*a*) any interest in land held on 1st July, 1948, entitling the owner on that date to receive a rent, royalty or similar payment from a mineral undertaker for the right to win or work minerals in the land, and (*b*) any interest in land held on 1st July, 1948, by a mineral undertaker entitling him to win and work minerals therein. "Mineral undertaker" for this purpose means a person engaged in mining operations other than a person who works minerals for the purposes of an agricultural estate. The new time limit will be announced shortly. It applies in effect to all claimants who would have properly answered "Yes" to question 17 in Form S.1. These claimants need not submit Form S.1 by 30th June, 1949. The present time limit, i.e., 30th June, 1949, will still apply to all other claimants including those properly answering "Yes" to question 18 of Form S.1.

The Territorial Forces

THE appeal in the April issue of the *Law Society's Gazette* for recruits from the profession for the Territorial Forces will, we are sure, not be in vain. As the *Gazette* points out, 7,202 solicitors and 2,253 articled clerks served in H.M. Forces during the last war, and no doubt large numbers of these men will be prepared to submit their experience as officers and n.c.o.'s to the national need. Anti-Aircraft Command and the Women's Auxiliary Corps are particularly in need of volunteers because they receive fewer national service recruits than other units. Further information about conditions of service, pay and allowances, and training obligations can be obtained from any Territorial Army unit headquarters or from the secretary of the local Territorial and Auxiliary Forces Association.

Superannuation: National Service

THE Superannuation (Local Government Staffs) (National Service) Rules, 1949 (S.I. 1949 No. 545), which came into force on 1st April, deal with the preservation of superannuation rights during national service and take the place of the Local Government Staffs (War Service) Act, 1939. They apply to employees of local authorities undertaking national service on and after that date, but employees already on national service on 31st March, 1949, will, by virtue of para. 5 of Pt. I of the Schedule to the Superannuation (Miscellaneous Provisions) Act, 1948, continue to be subject to the Act of 1939 as amended by Pt. I of that Schedule. Rule 2 enables a pensionable employee to count a period of national service as contributing service if he returns to pensionable local government employment within six months of the termination of his national service, provided he pays contributions in accordance with the provisions of r. 4, payable on his notional remuneration, i.e., what he would have been getting had he stayed in his civil employment. Rule 3 deals with the employee who was not pensionable when he went on national service. There are two classes. First, those who would not have become pensionable during that period if they had remained with the local authority. Secondly, those who would have become pensionable, e.g., a temporary officer on completion of two years' service, a servant completing a qualifying period required by resolution under s. 3 (2) (*b*) of the Act of 1937, or an officer on reaching the age of 18. If within six months of the termination of his national service an employee of either class returns to local government service and then or later becomes pensionable he will be able to reckon his national service in the same way as if he had continued during his national service in his former employment, provided, in the case of persons in the second class, the conditions in r. 4 are satisfied. The effect of r. 4 is that, if a person would have become pensionable during the period of his national service had he remained in local government service, he is required to pay the contributions which he would have had to pay had he continued in his civil employment, as a condition of counting any part of his national service either as contributing service or as non-contributing service.

Procedure at Public Meetings

WHAT "oft was felt," but never, so far as we remember, expressly stated, about the jargon of procedure at meetings, has been set out in a forthright letter in the *Law Institute Journal* of 1st January, 1949, from Mr. H. R. BLAIR. Rules, he wrote, are coming more and more to tyrannize over the proceedings at public meetings. He called the rules a "ritual" and said that as "a lonely practitioner" he tried to point out that business could be transacted in a meeting with no more formality than is required of two men making a bargain. "The formalities," he wrote, "of moving, seconding, and notices of motion are no part of the law of the land, and are merely peacock's feathers," and "each meeting is a master of its own procedure and the failure to observe the ritual does not invalidate the business done." Business at public meetings in these days, he said, should have "room to swing that terrible sword of hers, public opinion," and "she must be streamlined, not crinolined." We feel the strongest inclination to agree with this, were it not for our sharp recollection of a number of meetings saved from imminent break-up in disorder by a timely motion "that the question be now put." However, we cannot pretend to have the slightest use either for peacock's feathers or for crinolines.

Taxation

THE DEATH DUTIES: HUNTERS AND HUNTED—VI

BEFORE leaving the subject of avoidance of aggregation through the medium of nomination life policies, it should be added that annuities provided by A in his lifetime, to arise at his death, are on the same footing, i.e., they are treated as " estates by themselves " on his death if A himself never could have had any beneficial interest. But if A charged the annuity upon his property he *had* an interest, as for example an annuity to be paid to his widow after his death out of the profits of a business in which he was a partner (*A.-G.* v. *Wendt* (1895), 65 L.J.Q.B. 54), or a rent-charge or annuity charged upon property which he at any time owned (*Liberton and Craigmillar Estates* v. *I.R.C.* [1942] S.C. 402; 21 A.T.C. 192). In such circumstances full aggregation would apply; but if A sells his business to B, who undertakes with A, as part of the bargain, to pay an annuity to A's widow and children after A's death, B charging his interest in the business therewith, no duties at all arise on A's death, because no beneficial interest arises on A's death: the widow and children cannot sue B for the annuity, because they were not parties to the contract (*Re Miller's Agreement* [1947] Ch. 615). An advantage of providing annuities in A's lifetime to arise on his death is that estate duty is only payable upon the value of the annuity (which depends upon the age of the beneficiary), and not (as is the general rule) upon the capital sum necessary by the income thereof to provide such annuity—see wording of the Finance Act, 1894, s. 2 (1) (*d*); if, therefore, the annuity value works out at under £2,000, and if it is " an estate by itself," no estate duty at all is payable in respect of it. And where the annuity may determine upon a contingency, such as remarriage of the deceased's widow, an allowance is made for such contingency, according to the age of the widow. A table of such allowances for the contingency of remarriage appears in Dymond's Death Duties, 10th ed., at p. 291. The state of health of the annuitant may also be taken into account on proper proof being given.

Certain " small annuities " of up to £52 are exempted, and ones over £52 and less than £104 are partially exempted from estate duty under the Finance Act, 1894, s. 15 (1), as amended by the Finance Act, 1935, s. 33 (1), but, owing to the obscurity of the wording of the latter section and lack of space for dealing with it here, it is necessary to refer the reader for a full explanation to Dymond's Death Duties, 10th ed., p. 232 *et seq.*, or Woolley's Handbook on the Death Duties, 6th ed., pp. 17 and 18. In general, only the *first-granted* annuity of under the stated amount is exempted, but this means the first-granted annuity to a given annuitant. There can be a hundred or more different annuitants and the first-granted " small annuity " to each of them will be exempt. And in certain cases explained in the text-books an annuity may be exempted even if it is *not* a first one. It is thought that where such an annuity has been bought by the deceased for a beneficiary within five years of his death, no claim for estate duty *qua* gift *inter vivos* arises, even in the case of any beneficiary whose benefit is valued at over £100 at the date of the death. It must be made clear that these sections do not relate to annuities provided by a deceased's will, but only to ones provided for in his lifetime.

SURRENDER OF LIFE INTEREST TO REVERSIONER

This course is sometimes taken, not to avoid death duties, but because it is the only course open to a parent for making provision for a child about to marry. A is a widow with a life interest under her marriage settlement, her son B being the reversioner. A surrenders her life interest to B by way of a wedding present so that he can at once use the capital. Estate duty will become payable on the capital on A's death if she dies within five years of completing the surrender, for it is clear that the exemption given to ordinary gifts made in consideration of marriage does not extend to surrenders of a life interest; in other words, the claim for estate duty on the life-tenant's death under the Finance Act, 1900, s. 11 (1), as amended by the Finance Act, 1940, s. 43, overrides the exemption given to gifts by the Finance (1909-10) Act, 1910, s. 59 (see Hanson's Death Duties, 9th ed., p. 283). If A does survive the surrender by five years then no estate duty will be payable on her death (Finance Act, 1940, s. 43) but succession duty will remain payable under the original settlement and, because no estate duty was payable, the higher rate of succession duty will apply, viz., 1½ per cent. (now 3 per cent.) instead of 1 per cent. (now 2 per cent.). The trustees of the settlement at the time of the surrender should remember that *succession duty* attaches at the time of the creation of the settlement, and that nothing can get rid of it, and that they will be personally liable to the Revenue for it, so that they must cover themselves before they allow the capital to be handed over to B (*A.-G.* v. *Chambres* [1921] 1 K.B. 173). They should apply to the Estate Duty Office for commutation of the duty. They are also probably liable to the Revenue for the estate duty which will become payable if A dies within five years, but the trustees' only course as to this duty seems to be to hold back sufficient capital for five years to cover their possible liability. In special cases the Commissioners will agree to name a maximum sum for which they will hold the trustees responsible (see Dymond, *op. cit.*, 10th ed., pp. 148 and 156, and Green's Death Duties, 2nd ed., p. 202). The same remarks apply where, with a life-tenant's consent, capital is raised and paid out for a child's advancement.

DISCRETIONARY TRUSTS

No estate duty is payable unless a measureable interest passes on the death. A settles capital by his will so that the trustees can at their absolute discretion pay income to either or all of B, C, D, and E, and on the death of the survivor, the capital to be paid to F. Assume that they die in this order. Duties are, of course, payable on the whole on the death of A himself, but no estate duty will be payable on the deaths of B and C. On D's death, estate duty will become payable on the whole capital because E becomes the only person to whom the trustees can pay the income, and it also becomes payable on the whole on E's death. Legacy duty or succession duty appears to be payable, however, on the amounts actually paid to *each* of the beneficiaries.

If A settles capital in his lifetime on a similar trust, and survives by five years, no duties will be payable on his own death, unless he himself is one of the discretionary beneficiaries, in which case duty *will* be payable on the whole, even if he actually received no benefit after the settlement (*A.-G.* v. *Farrell* [1931] 1 K.B. 81). In *Ld.-Adv.* v. *Muir's Trustees* (1942), 21 A.T.C. 204, a fund was settled upon trust for a son contingently upon his attaining twenty-five, with discretionary power to the trustees to pay the son sums both of capital and income in the meantime. The son died under twenty-five, having received substantial sums from the trustees under their discretionary power. It was held that no property passed on his death and no duty was payable. This decision could be better understood if it had been based upon failure of the son's interest (Finance Act, 1894, s. 5 (3)), as he only had a contingent interest, and died before he became entitled in possession. The court held, however, that s. 5 (3) was inapplicable, but that no property passed under the Finance Act, 1894, s. 1. This seems difficult to reconcile with *Re Hodson's Settlement* [1939] Ch. 343, and *Westminster Bank, Ltd.* v. *A.-G.* [1939] Ch. 610.

SOME REMINDERS

As this article is intended to be the closing one of the series, opportunity is taken to draw attention very briefly to several important practice points.

(1) *Valuation of houses owned and occupied by the deceased.*—This concession (printed in full on p. 292 of Woolley's Handbook on the Death Duties, 6th ed.) applies where a near relative of the deceased, who was ordinarily resident in the house, remains

there after the death and has no other place of residence available. The full present market value must appear in the affidavit and probate papers, but duty is only payable on the *pre-war value*. But note that the value will be reviewed if the house is let or sold within " a reasonable period of (say) two years from the death." Note that the two years is not a fixed period. Valuable notes on this concession appear in the *Law Society's Gazette* for November, 1948 (p. 197), and January, 1949 (p. 8).

(2) *Property affected by the Town and Country Planning Act*, 1947.—A useful note on this subject appears at 92 SOL. J. 693. See that any valuation fully allows for the effect of the Act upon the property.

(3) *Continuing Annuities.*—The Board of Inland Revenue have announced an important change of practice in valuing for estate duty—see the *Law Society's Gazette*, November, 1948, p. 197, and 92 SOL. J. 694. The practice hitherto has been, where A and B are joint annuitants and A died, to charge duty only upon the actuarial value of the benefit accruing on A's death to B, i.e., on the value of B's life interest; but now duty will be claimed upon the capital set free on A's death by the cesser of his annuity, under the Finance Act, 1894, s. 2 (1) (*b*). It is understood that a case is likely to come before the court shortly in which this new claim will be resisted. The statement on p. 254 of the 6th ed. of Woolley's Handbook must now be read in this fresh light.

(4) *Protection of executors and trustees against legacy and succession duty claims.*—A note in the *Law Society's Gazette* for January, 1949, p. 8, points out that certificates under s. 11 (2) of the Finance Act, 1894, only give protection as regards estate duty. Executors and trustees who intend to distribute funds in their hands should apply to the Estate Duty Office for a certificate of discharge under s. 12 of the Customs and Inland Revenue Act, 1880.

(5) *Complications arising from doubling the rates of legacy and succession duty* (*Finance Act*, 1947, s. 49).—(*a*) Where a will gives a legacy free of legacy duty does this throw the " further duty " imposed by the above section upon the testator's residuary estate? The answer is " Yes "—*Re Shepherd, deceased* (1948), 92 SOL. J. 661. The case decides that the " further duty " is all one with the former legacy duty, i.e., that it amounts to a raising of the rate of the old duty, and is not a fresh duty.

(*b*) A legacy is settled by a testator in succession on persons all liable at the same rate, and duty was paid on his death on the capital. The legacy was given free of duty. He died before the 1947 Act. A life-tenant of the legacy dies *after* the Act, and so further legacy duty has to be found. Who in fact will have to find the money? The settlor's estate has been wound up. If the reversioner has to pay the further duty out of his own pocket (in spite of the legacy being given to him free of duty), can he recover it from the settlor's residuary legatees? From the Court of Appeal's decision in *Re Diplock's Estate* (1948), 92 SOL. J. 409 (reversing the lower court), it seems that in many cases he will be able to. Can the reversioner recover from the settlor's executors personally? It is thought not; in any case it would be quite wrong to try.

H. A. W.

THE LEGAL AID BILL IN COMMITTEE

(*Concluded*)

THE only matters remaining for consideration at the final sitting of the committee were the three Schedules. Schedule I, listing the civil proceedings in which aid may be given, was slightly amended in two respects: proceedings in the Bristol Tolzey Court and the Norwich Guildhall Court were added, and proceedings in magistrates' courts were restricted to cases of bastardy, guardianship and custody, separation and maintenance, and proceedings under the Small Tenements Recovery Act. It will be remembered that this Schedule excludes aid in proceedings " wholly or partly " in respect of defamation, breach of promise, seduction or enticement, and another amendment was moved by Mr. Manningham-Buller to delete " or partly " from the words quoted. He said that the amendment was moved in order to ascertain exactly what was intended, and suggested that it was unfair that an applicant wishing to bring proceedings, say, for assault and libel should be totally debarred from obtaining aid. The Attorney-General pointed out that if " or partly " was deleted it would enable those wishing to sue for defamation to obtain aid by resorting to the device of adding some other cause of action. If in fact the applicant had two genuine causes of action, one within the scheme and the other outside it, he would have to issue two separate writs, one as an aided, and the other as a non-aided, litigant. Mr. Manningham-Buller and Mr. Strauss drew attention to the complications that would ensue if the two actions were consolidated so that it would be impossible for the applicant to continue with two separate sets of counsel and solicitors. Probably, as the Attorney-General suggested, these difficulties are somewhat theoretical since it is not customary to join other causes of action with actions for defamation, etc., and in any event there would seem to be nothing to prevent the applicant from employing the same lawyers in both actions, in which event the only complication would be the separate taxations of costs in respect of each. An assurance was given that the question would be looked into again, but it seems clear that no really satisfactory solution is possible until the scheme is extended to all actions, and it is gratifying to note that the Attorney-General promised that at an early stage the whole Schedule would be referred to the Lord Chancellor's Advisory Committee to see whether some of the exclusions could not be removed. In view of these assurances the amendment was withdrawn.

All the proposed amendments to Sched. II (Resources to be disregarded in assessing applicant's means) were ruled to be out of order, but an assurance was given that the provisions would be reviewed to ensure that they would work fairly in cases where the means of the husband and wife were aggregated. Mr. David Thomas also doubted whether the Schedule made it clear that payments under the pneumoconiosis benefit scheme should be disregarded, and it was agreed that this would be looked into.

The main discussion of the day took place on Brig. Medlicott's amendment to Sched. III, designed to secure that lawyers should be remunerated in full in High Court litigation and not merely to the extent of 85 per cent. In an admirable speech he pointed out that the 15 per cent. cut in fact represented about half the profit costs in litigation matters in which normal remuneration was certainly not over-generous. He failed, however, to enlist any support, the contrary arguments being that it was right and proper that the legal profession should make their contribution to the scheme, that an assured 85 per cent. was better than a doubtful 100 per cent. and that the 15 per cent. cut had been accepted by the professional bodies and the bulk of the profession. In these columns the view has always been taken that the cut is an unfortunate piece of cheese-paring, not so much because it imposes any excessive hardship on the profession, but because it draws an unfortunate distinction between aided clients and others. It is considered vital that nothing should be done to lead an aided litigant to think that he is not getting the same service as he would if he could pay for it, and it is to be feared that he will get this impression if he knows that his lawyers are being remunerated on a lower scale. If this view is right, then the fact that the professional bodies have agreed to the cut is irrelevant. In any event, it just is not true to suggest, as was implied in the debate, that the profession have welcomed the cut as an ideal solution; all they have done is to accept it as a reasonable compromise, as it probably is from their point of view except perhaps in those cases where a larger sum for costs is recovered from the other side. However,

Brig. Medlicott had attained his main purpose by drawing attention to the contribution which the profession as such will make to the scheme over and above that which they make as taxpayers, and having done so he withdrew the amendment.

The final amendment was that referred to at p. 155, *ante*, providing that costs payable should be 85 per cent. of the higher scale of solicitor-and-client costs (roughly midway between the lower scale and solicitor-and-*own*-client). This was agreed to without a division and the committee rose.

Summing up the results it can be said that, although the general shape of the Bill remains unchanged, it has been considerably improved in detail. Such amendments as have been made are all to the good, a number of loose ends have been tied up, and a great deal of useful information has been given so that it is now possible to see much more clearly how the scheme is likely to work in practice. Almost all the possible points of disagreement have been raised and fully discussed and one major point of principle (for which this journal has throughout campaigned) has been secured, viz., arrangements for closing he gap between oral advice and aid in litigation. No one who has followed the deliberations of the committee can doubt the deep debt of gratitude which the public and the profession owe to its members, lay and legal, on both sides of the House. A few points still remain to be covered on the Report stage, but nothing that need delay the early passing of this most useful piece of social legislation. Its ultimate effect on our legal institutions cannot be foreseen with certainty. It may be, as some think, that it will lead to a vast increase in the size of the bench and Bar, but this seems far from certain. One thing, however, seems clear; that it should enable recently qualified men of both branches of the profession to earn a reasonable livelihood and should make a legal career somewhat less speculative. Whether it does so or not, lawyers at least have the satisfaction of knowing that they have done something to put their house in order and to adapt their organisation to meet changing social conditions without forfeiting their independence. Solicitors in particular may take pride in the role played by the Council and staff of The Law Society, to whom many tributes were paid during the course of the debate. The task of The Law Society is one of considerable delicacy since they have to act both as a professional trade union and as an executive organ of Government policy. Serving two masters is proverbially difficult, but The Law Society have so far performed this feat with satisfaction to both.

L. C. B. G.

THE REPORT OF THE DEPARTMENTAL COMMITTEE ON DEPOSITIONS

On 5th March, 1948, the Home Secretary appointed a Departmental Committee, under the chairmanship of Mr. Justice Byrne, "to inquire into the existing practice with regard to the taking of depositions in criminal cases and to report whether any, and if so, what, alterations in the law are necessary or desirable with a view to securing the more effective dispatch of the business of the courts while retaining public confidence in the administration of justice."

A stronger and more experienced committee could hardly have been selected; it included Sir Theobald Mathew, Director of Public Prosecutions; Mr. Derek Curtis-Bennett, K.C.; Mr. A. C. L. Morrison, late Senior Chief Clerk at Bow Street Magistrates' Court; several practising barristers and solicitors; and others whose experience and knowledge of the criminal courts render them eminently suitable for the purpose of the inquiry.

Thirty witnesses in all were examined: these included the Lord Chief Justice; three High Court judges (Humphreys, Cassels, and Slade, JJ.); the Solicitor to the Commissioner of Metropolitan Police; several clerks to justices; two chief constables; and members of the Bar and solicitors. In addition, the committee considered memoranda from twenty-two persons and organisations interested in the inquiry. It is safe to say, therefore, that no viewpoint was withheld from the committee, which had at its disposal the knowledge and experience of laymen as well as lawyers.

The report of this committee has recently been published (Cmd. 7639, price 9d.), and it is clear that every suggestion put before it for shortening and simplifying the procedure on committal for trial of indictable cases was most carefully sifted and examined. In making its recommendations, the committee rightly gives absolute precedence to the requirements of justice and the interests of the accused, and no innovations or variations of existing procedure are suggested which could, in the committee's opinion, in any way prejudice these important principles.

Early in its report the committee deals with the current practice of giving "notice of additional evidence." It is quite usual, where there are two or more witnesses available to prove the same facts, for one only of such witnesses to be called at the preliminary hearing, and for notice of additional evidence to be given in respect of the corroborative testimony of the other witnesses. This is a practice which the committee deprecates, expressing the view that the depositions should record the whole of the material evidence upon which the prosecution relies, and that the giving of notice of additional evidence, except for such as is not available at the time of the committal proceedings, should be discouraged. Further, the committee advises that it is wrong for a witness to shorten his evidence by saying that he has heard the evidence of another witness "and corroborates it." If the recommendations of the committee in these respects are carried out, it appears that, far from shortening the procedure before the justices, the result of the committee's activities will be considerably to lengthen it.

The committee then proceeded to consider whether the use of statutory declarations should be allowed in lieu of the calling of witnesses in person, on the lines of the procedure formerly permissible under reg. 16 of the Defence (Administration of Justice) Regulations, 1940. In principle, the committee saw no objection to the limited use of statutory declarations, but came to the obvious conclusion that certain safeguards were necessary. In order to ensure that no inadmissible evidence is included, it is recommended in the report that the use of statutory declarations should be confined to those cases in which the prosecution is legally represented, and that the Director of Public Prosecutions or the solicitor for the prosecution should be made responsible for the preparation of the declarations and the exclusion therefrom of all inadmissible evidence.

The report goes on to say that the committee considers that the accused should have an unqualified right to require the attendance of a witness to give oral evidence before the justices, if he so desires; accordingly, it is recommended that a copy of any declarations which it is proposed to use in evidence should be served on the accused at least fourteen days beforehand, together with a notice explaining the position and pointing out that in any event the witnesses will give evidence in person at the trial, and informing him that if he wishes them to attend the preliminary hearing he should complete and return an attached form within a week.

It is also recommended that the justices should have an overriding discretion to insist on the attendance of a witness to give oral evidence; and as it is just as important that a witness whose evidence is given by declaration should adhere to the truth as that a witness whose evidence is given orally should do so, it is further recommended that s. 1 of the Perjury Act, 1911, should apply.

Once a statutory declaration has been admitted as evidence, in the view of the committee it should be treated as a deposition for all purposes. This would enable a declaration admitted before the justices to be read at the court of trial in all cases where the ordinary deposition can be so read under the law

as it now stands. It is therefore suggested in the report that no evidence should be admitted by way of statutory declaration, either before the justices or at the trial, if the person making the declaration is proved to have been dead, or otherwise incompetent to give evidence, at the time when his declaration was tendered as evidence before the justices.

Finally, the committee advises that the use of a statutory declaration should not be permitted when the evidence has to be translated; or for the evidence of—

(i) any person under seventeen years of age;
(ii) the husband or wife of the accused;
(iii) accomplices;
(iv) persons whose statements may incriminate them;
(v) witnesses to identity, where identity will be an issue.

The proposed procedure outlined above is, of course, aimed at dispensing altogether with the attendance of certain witnesses before the justices. It is, however, obvious that there are many witnesses whose evidence for various reasons ought to be given orally and to be open to cross-examination at the preliminary hearing, and the committee therefore had under consideration the question of minimising the tedious procedure of taking the whole of such evidence down in long-hand or on the typewriter. There is also a practice, which obtains in a few courts, of taking the note in the first instance in short-hand, and then sending it out, page by page, for transcription into long-hand, so that it can be read over to the witness and signed by him there and then. The committee, after considering all the present methods of recording the depositions, contented itself by merely stating that the most satisfactory method of ensuring that the depositions are properly taken is for the clerk himself to record them either in long-hand or on the typewriter, but that each court should be free to adopt the method that it finds most convenient and best suited to its requirements and resources.

The committee then proceeded to consider whether in certain cases it was necessary for all the evidence to be written down in court at all, or whether a previously prepared statement could be read over to a witness and confirmed by him on oath, and then put in as his deposition. Since this is the most extreme form of "leading questioning," clearly it must be subject to adequate safeguards; on the other hand, to be at all effective any such innovation must be simple and elastic. Eventually, the committee recommended that the prosecution should be allowed to serve on the accused a copy of the draft deposition of any witness whom they propose to call before the justices, and that at the hearing, with the consent of all the accused and with the leave of the justices, the witness having been sworn, the draft deposition should be read by the clerk in the presence and hearing of the accused. The witness should then be asked if it is true, given the opportunity to amend it if he wishes, and to give further evidence-in-chief in the usual manner; he should be subject to cross-examination and re-examination, all of which should be recorded by the clerk and read over in accordance with the present practice; and the whole of it should then be signed by the witness and the justices and treated as a normal deposition for all purposes.

The safeguards which the committee advises should be applied are that this procedure should not be permitted for the evidence of—

(i) any person under seventeen years of age;
(ii) the husband or wife of the accused;
(iii) accomplices;
(iv) persons whose statements may incriminate them;
(v) any person whom either the justices or the prosecution or the defence requires to give his evidence in the usual manner.

Further, as in the case of statutory declarations, the committee recommends that this procedure should only be available when the prosecution is legally represented, and that the Director of Public Prosecutions or the prosecuting solicitor should be responsible for the preparation of the draft deposition.

This procedure, in common with that relating to the use of statutory declarations, would, of course, be open to the comment that greater facilities would be available to the prosecutor who is legally represented than to the prosecutor who conducts the case himself, but this is so obvious a criticism that it can hardly have escaped the notice of the committee, who must, therefore, be taken to have regarded it as of insufficient weight to affect its recommendations. In any event, since the accused and the justices would both have the right to require the evidence to be given in the ordinary way, it is unlikely that this criticism, however potent in theory, would have much force in practice.

The report then goes on to deal with the case of two or more persons jointly concerned in an offence, and recommends that where committal proceedings have been commenced against one accused before a further arrest is made, it should be permissible for the witnesses who have already given evidence to be recalled against the new accused, and for the deposition already taken to be read over. This procedure, it is recommended, should be available only where (*a*) the prosecution and the defence agree; (*b*) the leave of the justices is obtained; and (*c*) the witnesses who are recalled are available for cross-examination.

There is a further recommendation that the power to bind over witnesses conditionally should be extended and more freely used. To this end it is suggested that justices should be entitled to take into account not only anything that the accused may say before the justices, but also the contents of any statement by the accused which has been proved in evidence before them. Further, it is obviously important, in view of the wording of s. 13 (1) of the Criminal Justice Act, 1925, to ascertain if possible whether the accused is likely to plead guilty at the trial, and it is common knowledge that accused persons who intend to plead guilty are sometimes reluctant to say so because they fear that it may prejudice their chances of being allowed bail. Accordingly, the committee suggests that at the end of the case for the prosecution the charge should be read and explained to the accused and that he should be informed of his right to call witnesses and to give evidence on his own behalf; and that as soon as such evidence, if any, has been taken and recorded, the justices should announce their decision as to committal and as to bail. After all these steps have been taken, the accused should be asked whether he wishes to say anything in answer to the charge, and informed that he is not obliged to do so unless he so desires, but that whatever he says will be taken down in writing and may be given in evidence on his trial; and he should then be cautioned as at present provided in s. 12 (3) of the Act of 1925. This, of course, is merely a rearrangement of the present practice in a different sequence, but would result in the accused being given an opportunity to make a statement to the justices, announcing if he wishes to do so his intention to plead guilty or otherwise, after, instead of before, the questions of committal and bail are decided.

In this connection, the committee is further of the opinion that the statutory caution required by s. 12 (3) should be reworded in simpler form, so as to be more readily intelligible to the accused.

The report also deals with the multitude of forms which have to be prepared, and signed by the examining justices, on committal for trial at a court of assize or quarter sessions. Various simplifications are recommended, including the discontinuance of the present procedure for binding over witnesses to attend the trial, and it is suggested that in lieu thereof each witness should be served with a notice requiring him to attend the trial, and informing him that failure to appear will make him liable to penalties for contempt of court.

Most of these proposals can only be carried out by statute, though the actual amendments to the law which would be required to give effect to them would not be extensive or at all complicated. At first sight the committee's proposals may seem disappointing, but on a careful examination of the

problems arising it is difficult to see what more could be done to simplify or shorten the procedure on committal for trial. The matter is susceptible of many viewpoints, and it is of paramount importance that in the search for a more expeditious procedure nothing should be done which might place the accused under a handicap in the preparation of his defence, or render more difficult the proper presentation of the case by the prosecution. Above all, there must be no possibility that the essential fairness and impartiality of the proceedings might be prejudiced, actually or apparently, in order to expedite the necessarily laborious investigation by the justices.

No doubt the whole subject will in due course be very fully debated in Parliament, and it remains to be seen how much of the report will eventually find its way on to the Statute Book.

E. G. B. T.

A Conveyancer's Diary

THE NATIONAL PARKS BILL—II

THE next part of this Bill of direct interest to the majority of landowners is that which deals with public rights of way, and it may be said at once that the changes envisaged in this measure will, if carried out without substantial modification, work a complete revolution in this branch of the law. From the social point of view some change is probably overdue. The Rights of Way Act, 1932, which was expected to lead to the frequent assertion on the part of the public of rights of way which under the pre-existing law it would have been too much of a hazard to set up, was concerned very largely with matters of evidence. The public did not take the bait offered to it, and there cannot be many rights of way in the country to-day which owe their existence to that measure. Only two cases under it have been reported, so far as I can recall, and perhaps the most common reminder of the existence of the 1932 Act is the somewhat negative one of the notice which informs the passer-by that, under the Act, a certain path or road is not to be regarded as a public right of way.

This Bill sets about the problem in quite a different way. First, it lays a duty upon the local authority to make a survey of public paths in its area and to publish the result in a form which will serve as conclusive evidence of the matters with which it deals. Secondly, it confers on local authorities the power to create public paths where none existed before, either by agreement with the owners or other persons interested in the land over which the rights in question will be created, or by the exercise of compulsory powers. And lastly, the Act of 1932 is amended in one not unimportant respect.

First, then, as to the preparation of a survey of existing paths. The Bill defines " public path " as meaning a highway which is either a footpath or a bridleway (cl. 27 (6)), and also contains a definition of the expression " road used as a public path " as meaning a highway, other than a public path, used by the public mainly for the purposes for which footpaths or bridleways are used—that is, the ancient green roads found here and there in the country which are still technically roads, but on which vehicles are seldom seen unless it be a cart or tractor from a neighbouring farm. These paths and roads, then, are the raw material for the survey.

The complete process of this novel inquisition into existing public rights of way comprises four separate stages: survey, preparation of draft map and statement, preparation of provisional map and statement, and, finally, preparation of definitive map and statement. The reason for what may, at first sight, appear to be an unduly cumbrous process is the care taken to deal with objections.

The authority upon whom the duty of making a survey is laid is described in cl. 27 (1) as the county council, but, having regard to cll. 35 and 36 (which deal, respectively, with the application of this part of the Bill to London and county boroughs, and the substitution, subject to certain conditions, of a joint planning board for the county council as the surveying authority), this authority may, in the ordinary way, be regarded as being the local planning authority. This authority is now to prepare (1) a draft map of its area showing thereon any way which, in the opinion of the authority, was on the relevant date either a public path or a road used as a public path, and (2) a statement to be annexed to the map setting forth various particulars concerning the ways shown on the map. The " relevant date " for this purpose is such date, not earlier than six months before notice of the preparation of the draft map is given, as may be determined: it is obviously necessary that evidence of a right, the existence of which must be proved, should relate to a fixed date.

When the draft plan and statement is completed, notice must be given of the place where it can be inspected, and of the time and manner in which representations or objections may be made (cl. 29 (1)). If any representation or objection is made to the authority as to anything contained in or omitted from the draft map and statement, the person by whom it was made must be given an opportunity of being heard by the authority, who is then to determine what modifications must be made to the draft as a result, and who must also serve notice on the person by whom the representation or objection was made (cl. 29 (2)). Now it is clear from the provision regarding the entering of objections to omissions from the draft map and statement that the public, as well as the landowner, are to be at liberty to make objections; what is surprising (and this is probably an oversight) is that if a member of the public objects that his favourite footpath has been omitted from the draft, and that objection is accepted so that the draft is modified to include the path in question—a proceeding which appears to fall clearly within the purview of cl. 29 (2)—no provision is made for informing the landowner to that effect. The landowner, it is true, is not without a final remedy, as will be seen, but it would seem convenient to put him on all fours, at this stage, with the objecting citizen, if only because at this stage his representations and objections are likely to cost him little beyond his time. That is unlikely to be the case with an application to a court at a later stage, under provisions yet to be described.

The objecting citizen is also given a right, denied to the landowner, if aggrieved by a determination of the authority as to anything omitted from the draft, to appeal to the Minister of Town and Country Planning (cl. 29 (3)). Here again there is no provision for even so much as keeping the landowner informed of the lodging, progress or result of such an appeal (see cl. 29 (4)). Yet the Minister has the power, on such appeal being made, to direct the modification of the particulars contained in the draft map and statement, which in the context obviously comprehends the inclusion, at the instance of a member of the public, of a right over A's land of the assertion of which A may be in complete ignorance.

The draft map and statement, with the modifications (if any) directed by the Minister or determined by the authority, now becomes the provisional map and statement, of the making of which due notice must be given by advertisement in the usual way (cl. 30). Thereupon the owner, lessee or occupier (but not mortgagee as such) of any land shown on the map as a public path, or as a road used as a public path, may apply to quarter sessions for a declaration (*a*) that at the relevant date there was no public right of way over the land; (*b*) that the public right of way over the land was such a right as may be specified in the application, and not such a right as is indicated in the provisional map; or (*c*) that the said right was not unconditional, but subject to some conditions or limitations specified in the application (cl. 31 (1)). And the court's powers of dealing with such applications are limited, for by cl. 31 (3) if it is not proved, in the case of an application under (*a*) above, that there was at the relevant date a public right of way over the land, or in the case of an application under (*b*) above, that the public right of way in question was a

right other than that specified in the application to the court, the court must make the declaration sought by the owner, etc., of the land. Thus by applying to quarter sessions the owner can ensure that no right of way over his land will be included in the authority's map and statement of rights of way in its area unless affirmative proof of its existence can be adduced.

Subject to these rights of appeal the provisional map and statement becomes, in due course, the definitive map and statement (cl. 32), and as such is to become conclusive evidence as to the particulars contained therein. Provision is also made for periodical revision of these maps and statements.

I have left myself no space to say anything of the powers conferred on local authorities by cll. 38 to 41 to create new public rights of way, or of the interesting proposal contained in cll. 44 to 46 to establish long-distance footpaths and bridleways, in which the National Parks Commission are to take the initiative. These matters, and the amendment proposed to the Act of 1932, will call for attention in due course when the Bill becomes law, but they are not so revolutionary in character as the parts of the Act I have described and which, I think, deserve the immediate consideration of the practitioner.

"A B C"

Landlord and Tenant Notebook

ESTOPPEL AND CONTROL

I DO not know how the landlords who were plaintiffs in *Smith* v. *Mather* (1948), 92 SOL. J. 231, actually effected service of their notice to quit on the President of the Probate, Divorce and Admiralty Division of the High Court, in whom the tenancy concerned had vested on the death of the tenant intestate (Administration of Estates Act, 1925, s. 9); the effect was that, the tenancy having been contractual, the deceased's children were unable to claim protection under the Increase of Rent, etc., Restrictions Act, 1920, s. 12 (1) (*g*) (see 92 SOL. J. 229). It may well be that as a consequence of that decision the practice of serving such notices increased, and that this led to the direction by which they are now to be served on the Treasury Solicitor (see 93 SOL. J. 154). The idea had not, however, occurred to the predecessors in title of the plaintiff in *Mackley* v. *Nutting* (1949), 93 SOL. J. 197 (C.A.), when (assuming the original tenancy to have been a periodic one) the opportunity offered itself, which was indeed some years before the decision in *Smith* v. *Mather*.

What they did—and, of course, in practice, many thousands of landlords have, without intending any disrespect to the President, done the same thing—was to accept rent from the tenant's widow; and indeed we are told that they had no wish to turn her out. But when she joined her husband, and their daughter presented herself as a claimant, relying on her mother's intestacy and on a grant of letters of administration of her mother's estate to herself, the plaintiff served a notice to quit on the President and brought an action for possession. The county court judge, no doubt purporting to apply *Pain* v. *Cobb* (1931), 146 L.T. 13, decided that the provision for transmission of a statutory tenancy on death would not operate twice; there is, as it were, no statutory tenancy in tail. Before so doing the learned county court judge had, of course, held that the defendant's mother had been a statutory tenant, and it was on this point that the Court of Appeal reversed the judgment.

The Court of Appeal held, in effect, that this was a clear case of tenancy by estoppel, the estoppel created by the plaintiff's predecessors in title binding him, and the defendant being entitled to the resultant contractual tenancy. The authority cited was *Webb* v. *Austin* (1844), 7 M. & G. 701. The point actually dealt with in that case, an action to recover a deposit paid by an intending purchaser, was whether the plaintiff could rely on a flaw in title due to the grant of an underlease without the concurrence of the mortgagee of the lease, who was now willing to concur and execute any document the occasion called for. (The "legality" of such an underlease was, it may be recalled, recently emphasised by the decision in *Dudley and District Benefit Building Society* v. *Emerson* (1949), 93 SOL. J. 183; see *ante*., p. 213.) Tindal, C.J., held that this enabled the vendor to make a good title, referring in the course of his judgment to statements of the law to be found in Preston's Treatise on Abstracts and Bacon's Abridgment on the effect of a grant by a person not entitled plus subsequent acquisition of title. This seems a little remote from the facts of *Mackley* v. *Nutting*, and one cannot help suggesting that the result could have been achieved by remembering that the law of estoppel is essentially part of the law of evidence, and applying this so that the plaintiff "could not be heard to say" that the grant made by his predecessors in title was invalid. The existence of a mortgage, before 1881, was no doubt as good an example of disability as that of an existing tenancy; but if an instance of the latter had been sought the estoppel of a lessor against a "second lessee" was recognised centuries ago in *Ferrers* v. *Borough* (1599), Cro. Eliz. 665. The proposition that persons claiming under a landlord are bound by the estoppel is also supported by authority of respectable antiquity, e.g., *Anon.* (1560), Moore K.B. 20.

FLATS: INVITEE OR LICENSEE

The decision in *Anderson* v. *Guinness Trust* (1949), 93 SOL. J. 165, did not add much to our knowledge of the law, but is worth reporting, not only as another illustration of the principles laid down in *Fairman* v. *Perpetual Investment Building Society* [1923] A.C. 74, but because it records an ingenious, one might almost say entertaining, attempt to distinguish the indistinguishable.

In the older case, the sister-in-law and lodger of a tenant of a flat in a block owned by the defendants caught her heel, a 2½-inch one ("to the uninformed that might seem excessive, but it is accepted as medium height," was Lord Buckmaster's comment) in an irregular depression formed by the gradual wearing away of a tread of a stair in the common staircase, coupled with the non-wearing away of a bar of iron embedded therein. She sued for the injuries so occasioned. The House of Lords, overruling *Miller* v. *Hancock* [1893] 2 Q.B. 177 (C.A.), held that the only duty on the defendants towards the plaintiff, who was their licensee if the tenant's invitee, was not to expose her to a concealed danger or trap, and, by a majority of one, that the evidence did not show that they had failed to discharge that duty. The minority consisted of Lord Buckmaster and Lord Carson, of whom the one appears to have considered that the plaintiff was more than a licensee, and both that the defect constituted a trap. This decision was applied in the recent case, but before coming to its facts, mention may be made of *Haseldine* v. *C. A. Daw & Son, Ltd.* [1941] 2 K.B. 343 (C.A.), in which the managing clerk of a firm of solicitors sued for injuries sustained when about to visit the tenant of a flat on business, the cause of the injuries being the fall of a lift into which he had been shown by a porter, and the cause of the fall being the fracture of a gland negligently repaired by a firm of engineers who, under a contract made with the landlords, regularly inspected and reported on the condition of the lift. He sued both landlords and engineers, and recovered against the latter only, on the *Donoghue* v. *Stevenson* [1932] A.C. 562 ("who is my neighbour") principle. As regards the landlords, it is interesting to note that, according to Scott, L.J., the relationship was that of invitee and invitor, the landlord of a block of flats having an interest of his own in facilitating access to tenants' visitors, and the *ratio decidendi* of *Fairman* v. *Perpetual Investment, etc.*, was that there was no failure of duty towards the lodger, whether she was an invitee or a licensee; passages describing her as a mere licensee were

obiter dicta; but that Goddard, L.J., took the opposite view on this point, and considered that if the views expressed were *obiter* it was for the House of Lords and not the Court of Appeal to say so. But both agreed that the landlords had done all that they could be expected to do by engaging the engineers. One might put it in this way: if there was a trap, they had not set it.

The property concerned in *Anderson* v. *Guinness Trust* was a group of blocks of flats. During the recent war the local authority built air-raid shelters in the connecting courtyards: more recently, it demolished and removed them, and in one case at least left the surface uneven. The plaintiff, wife of a tenant of a flat in one block, was on her way to return a milk bottle to her sister who resided in a flat in another block, when she tripped on an irregularity so constituted, the existence of which was known to her, and fell and sustained injuries. It was argued that she was an invitee because she kept house for her husband and thereby facilitated his life and rendered him better able to pay the defendants the rent. Possibly the argument was inspired by Scott, L.J.'s observations in *Haseldine* v. *C. A. Daw & Son, Ltd.*, though the learned lord justice did not, in terms, suggest that the plaintiff's visit was designed to improve the prospect of rent being paid, but rather that the landlords' interest lay in the fact that if such access were not facilitated the flats could not be let. However, Hilbery, J., declined to accede to it, holding that the plaintiff was a licensee and that there was no concealed danger.

R. B.

NOTES OF CASES

COURT OF APPEAL

CHARTERPARTY: FULL LOAD LESS THAN SHIP'S DEADWEIGHT CAPACITY

Hain Steamship Co., Ltd. *v.* Minister of Food

Tucker, Singleton and Denning, L.JJ.
1st February, 1949

Appeal from Sellers, J. [1948] W.N. 326.

By a voyage charterparty, in Centrocon form, the appellants' ship, *The Trevose*, was to load "a full and complete cargo of wheat and/or maize and/or rye in bags and/or bulk." By cl. 6 the respondent charterer had the option of shipping other cargo "in which case freight to be paid on steamer's deadweight capacity for wheat in bags on this voyage at the rate above agreed for heavy grain, but steamer not to earn more freight than she would if loaded with a full cargo of wheat in bags . . . All extra expenses in loading and discharging such merchandise over heavy grain to be paid by the charterers." The ship was to be loaded and discharged at so many tons a running day. The charterers shipped a mixed cargo, part being a cargo, taken as contemplated, of maize in bulk, and part being an optional cargo of linseed and pollards in bags. The cargo space was filled, but the total weight of the cargo loaded was 579 tons less than the ship's deadweight capacity for wheat in bags. The shipowners contended that under cl. 6 the freight on the whole cargo was to be calculated by applying the rate for heavy grain, 83s. 6d. a ton, to the vessel's deadweight capacity for wheat in bags. The charterers contended that there should be deducted a sum which represented the saving of expense to the shipowners by reason of their not having to discharge the 579 tons of cargo not loaded. The shipowners further contended that for demurrage purposes the lay days were to be calculated on the actual tonnage loaded and discharged and not, as the charterers contended, on the deadweight capacity of the ship. The umpire decided in favour of the shipowners on both points. Sellers, J., upheld the umpire on the question of demurrage, but disagreed with his decision on freight, holding that, on the true interpretation of cl. 6, the shipowners should be placed in no better position than if they had in fact carried wheat in bags instead of the optional cargo, and that the charterers must therefore have the benefit of the saving to the shipowners of discharging expenses. The shipowners appealed and the charterers cross-appealed.

TUCKER, L.J., said that he could find in cl. 6 no justification for deduction of the saved discharge expenses from the freight. If the result for which the charterers contended had been contemplated, it would have been easy to say so in the charterparty. No distinction could properly be drawn between the words "freight to be paid" and "steamer not to earn more freight" in cl. 6. According to the charterers' argument the clause meant "but the shipowners are not to make any greater profit out of the adventure than if contemplated cargo had been shipped." "Freight" was the remuneration to which the shipowners were entitled on the performance of their obligations under the charterparty. It had no relation to the profits which they might make or to the expenses which they might incur in order to earn the freight. On the question of demurrage he was in agreement with the umpire and Sellers, J. To have the meaning attributed to them by the charterers, cll. 13 and 25 would have to read "steamer shall be loaded [or discharged] at the rate of so and so many tons a running day, calculated on the deadweight capacity of the ship." The lay days were, in his opinion, to be calculated on the actual cargo carried.

SINGLETON and DENNING, L.JJ., agreed.

Appeal allowed. Cross-appeal dismissed. Leave to appeal to the House of Lords.

APPEARANCES: *Sir Robert Aske*, K.C., and *Mocatta* (*Holman, Fenwick & Willan*); *Sir William McNair*, K.C., and *H. L. Parker* (*Treasury Solicitor*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

NOTICE TO QUIT: SUBSEQUENT ACCEPTANCE OF RENT

Clarke *v.* Grant and Another

Lord Goddard, C.J., Bucknill and Denning, L.JJ.
22nd March, 1949

Appeal from a decision of Deputy Judge Smylie given at Birkenhead County Court.

The defendants were yearly tenants at a rent of £75 a year of a house belonging to the plaintiff. After the tenants had received from the landlord a valid notice to quit the tenant paid to the landlord's agent a sum of money equivalent to one month's rent. The agent received that sum in the mistaken belief that it was for rent in arrear for the previous month, for the rent had in fact always been paid in advance. The deputy county court judge held, there being no other evidence of any agreement between the parties, that the notice to quit had been "waived," and dismissed the landlord's action for possession. The landlord appealed.

LORD GODDARD, C.J.—BUCKNILL and DENNING, L.JJ., agreeing—said that the judge had fallen into the error of confusing an acceptance of rent after a notice to quit with an acceptance of rent after notice that a forfeiture had been incurred. If a landlord sought to recover possession of property on the ground of a breach of covenant which entitled him to enforce a forfeiture, acceptance of rent thereafter waived the forfeiture, for the landlord, where liability to forfeiture had arisen, had the option of saying whether he would treat the breach of covenant as incurring a forfeiture or not. The breach made the lease voidable, not void. With regard to the payment of rent after a notice to quit, however, that had never been the law: when a landlord had brought a tenancy to an end by means of a notice to quit, a payment of rent after that date would only operate in favour of the tenant if it could be shown that the parties intended that there should be a new tenancy. A new tenancy must be created. That was laid down in *Doe d. Cheny* v. *Batten* (1775), 1 Cowp. 243. It was impossible to find that the parties here intended that there should be a new tenancy: the landlord was all the time desiring to get possession of the premises; that was why he had given his notice to quit. The mere mistake of his agent in accepting as rent which had already accrued rent which was in fact payable, if it was payable at all, in advance, could not be used to establish that the landlord was agreeing to a new tenancy. The present case gave the Court of Appeal an opportunity of overruling once and for all *Hartell* v. *Blackler* [1920] 2 K.B. 161, where the court fell into exactly the same error as the deputy judge here in confusing an acceptance of rent after a notice of forfeiture with acceptance of rent after the expiration of a notice to quit. *Hartell* v. *Blackler*, *supra*, was expressly dissented from by another Divisional Court in *Davies* v. *Bristow* [1920] 3 K.B. 428. *Hunt* v. *Bliss* [1919] W.N. 331, was unfortunately not brought to the notice of the court in *Hartell* v. *Blackler*, *supra*. In *Davies* v. *Bristow*, *supra*, Lush, J., in a most convincing judgment, explained why he preferred *Hunt* v. *Bliss*, *supra*, to *Hartell* v. *Blackler*, *supra*, which was wrongly decided and must be taken to be overruled. There was no

evidence on which the deputy county court judge could find a new tenancy. The landlord was entitled to possession. Appeal allowed.

APPEARANCES: *C. J. I. Cunningham* (*George A. Herbert* for *Edward A. Simans*, Birkenhead); *Robertson Crichton* (*Ranger, Burton & Frost*, for *G. F. Lees & Son*, Birkenhead).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

GIFTS TO SERVANTS: LUNACY OF TESTATRIX: WAGES PAID BY RECEIVER

***In re* Silverston, deceased; Westminster Bank *v.* Kohler**

Romer, J. 1st March, 1949

Adjourned summons.

By her will dated 21st December, 1944, the testatrix gave legacies of £500 free of duty to her two domestic servants AK and RM "if they shall be in my service at the time of my death and not under notice to leave." RM was one of the attesting witnesses. By a codicil of the same date the testatrix bequeathed to her maid RM £500 if she should be in her service at the time of her death. This legacy was not expressly stated to have been given free of duty. By an order of 19th March, 1945, a receiver of the property of the testatrix was appointed, and she was shortly afterwards removed to a mental home and her house was sold pursuant to an order of the administration department. The receiver continued the employment of AK and RM in the patient's service at retaining fees which were paid until the testatrix's death which occurred on 31st May, 1948, but no services were then being performed by either of them. The summons was taken out by the trustee of the will to determine whether AK and RM were in the service of the testatrix at the time of her death, and whether RM was entitled to a legacy of £500, and if so whether it was payable free of duty.

ROMER, J., held that having regard to the decision in *In re Cole* [1919] 1 Ch. 218, both AK and RM were in the testatrix's service at the time of her death. See also *In re Lawson* [1914] 1 Ch. 682 and *In re King* [1917] 2 Ch. 420. A person employed by the receiver of the estate of a patient could be regarded as being an employee of the patient herself. The legacy of £500 given to RM by the will was void, owing to her having attested the will. The legacy given by the codicil to her was not intended to be an additional sum, but to substitute another legacy of £500 and cure the defect. RM, therefore, was entitled to the legacy of £500 under the codicil, and she was so entitled on the same terms as she would have been entitled to the previous legacy if that had been effective, that is to say, she was entitled to it free of legacy duty.

APPEARANCES: *Donald H. Cohen; John L. Arnold; E. G. Wright; A. H. Droop* (*Hicks, Arnold & Co.*, solicitors for all parties).

[Reported by H. LANGFORD LEWIS, Esq., Barrister-at-Law.]

ANNUITY "FREE OF INCOME TAX": RECTIFICATION SOUGHT BY SUBSTITUTING "AFTER DEDUCTION OF INCOME TAX": MISTAKE OF LAW

Whiteside *v.* Whiteside

Harman, J. 11th March, 1949

Action.

The plaintiff was married to the first defendant in 1919 and there were two children born in 1920 and 1922, but the marriage was dissolved on the petition of the wife on 14th October, 1940. Before the hearing of the divorce proceedings, which were brought by the wife against her husband, there was considerable discussion between the solicitors of the parties, first as to alimony *pendente lite* and then as to maintenance both for the wife and for the children up to the time when they should reach a certain age. After the dissolution of the marriage an agreement was reached by the solicitors of the parties, and the solicitors of the wife sent the draft of a settlement to the solicitors of the husband whereby the husband consented to pay as maintenance for the wife "such a sum after deduction of income tax at the rate of not more than 7s. 6d. in the £ as shall represent £1,000 per annum." The solicitors of the husband altered the covenant as follows: "to pay to the wife for her maintenance the sum of £1,000 per annum free of British income tax up to but not exceeding 7s. 6d. in the £," and it was in that form that the deed was executed. In pursuance of the covenant, the husband paid the wife maintenance on a basis of freedom from income tax at 7s. 6d. in the £. During the first two years he obtained from the Crown deductions for sur-tax on the footing that that was his legal liability, but then the Crown took the view that the husband was not entitled to deduct the tax, having regard to subs. (2) of s. 23 of the General Rules of the Income Tax Act, 1918, which provides that "every agreement for payment of interest, rent or other annual payment in full without allowing any . . . deduction [of tax] shall be void." On 30th March, 1948, the husband executed a supplemental deed whereby he agreed that the original deed should be treated as rectified by substituting the words: "such an annual sum as after deduction of British income tax at a rate up to but not exceeding 7s. 6d. in the £ will leave the sum of £1,000 per annum," for the corresponding words of the original deed. By the present action the husband claimed rectification of the original deed.

HARMAN, J., said that the defendants, i.e., the former wife and the trustees of the settlement, had not the slightest interest in the action, since the husband continued to pay the wife the annuity on the basis of freedom of income tax at 7s. 6d. in the £. In fact, the defendants had first put in defences admitting all allegations in the statement of claim, but he [his lordship] had directed the trustees to withdraw their defence and to substitute a defence putting the husband to the proof of his case. The only object of the action was to obtain a weapon with which the husband could defend himself against the claims of the Revenue or make claims against them; the Crown had, therefore, been communicated with and asked whether it wished to be joined as a party, but had declined to be joined.

The action was not an action to put right anything which needed putting right. That had already been done. The covenantee had already received on any view all that she was entitled to. The covenantor had not, in any way, failed to pay it. There was no relief that the parties required. What was wanted was a side wind to help the husband against the Revenue. In these circumstances the court ought not to exercise its discretionary remedy of rectification.

But apart therefrom, this was a very striking case in so far as the very words which the court was now asked to put into the deed by way of rectification were considered by the parties when the matter was negotiated, and deliberately and with set purpose rejected; the amended draft showed that the parties deliberately intended to contract in the very words which they used. The contention of the plaintiff that the parties did not appreciate the legal consequences of their contract, and that their contract should be rectified on the ground of mistake of law, was not sound. Although the court had, in certain circumstances, power to relieve against mistakes of law, this case was in a different category. It was no ground for rectification that the agreement which the parties undoubtedly made had a different legal effect from that which they anticipated. *Van der Linde* v. *Van der Linde* [1947] Ch. 306, and *Fredensen* v. *Rothschild* [1941] 1 All E.R. 430, followed; *Jackson* v. *Stopford* [1923] 2 Ir.R. 1, approved.

APPEARANCES: *Honeyman, Colinvaux* (*Kimber, Bull & Co.*); *Newsom* (*Joynson-Hicks & Co.*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

OPTION TO PURCHASE LAND: NOTICE TO PERSONAL REPRESENTATIVE

Kennewell *v.* Dye

Roxburgh, J. 18th March, 1949

Adjourned summons.

R.D. leased certain freehold property to the plaintiff and granted him an option in the following terms: "It is further agreed that the said [R.D.] will sell to [the plaintiff] this property for the sum of £350, subject to the said [plaintiff] giving to the said [R.D.] three months' notice of his intention of so doing." After the death of R.D. the plaintiff gave the personal representatives of R.D. notice of his intention to exercise the option. It was contended that the option, on its true construction, was incapable of exercise after the death of R.D., in view of the omission of the customary expression "and his executors or personal representatives" following the name of the grantor.

ROXBURGH, J., said that the law was correctly stated in Williams on Executors, 12th ed., p. 1126: "The executors or administrators so completely represent their testator or intestate, with respect to the liabilities above mentioned, that every bond, or covenant, or contract of the deceased (not being a contract personal to the deceased) includes them, though they are not named in the terms of it, for the executors or administrators of every person are implied in himself." There were only two grounds which would prevent the burden of the option from devolving upon the personal representatives of the grantor. One would be if, as a matter of construction of the

document, the court should hold that it was not intended so to devolve. There was nothing in the document which would induce the court so to hold. The other would be that the contract was personal to the deceased. There was nothing in this case to make vicarious performance difficult on either side. Accordingly, he [the learned judge] could see no ground for holding that the burden of the option did not devolve upon the personal representatives of the grantor. The argument that the notice had to be given to R.D., and giving notice to his personal representatives was not giving notice to R.D., was precluded by *Harwood* v. *Helyard* (1678), 2 Mod. R. 268 [case No. 154], which he [the learned judge] intended to follow. The plaintiff was, therefore, entitled to exercise the option.

APPEARANCES: *Jopling* (*Routh, Stacey, Hancock & Willis*, for *Tallents & Co.*, Newark); *R. C. Vaughan*, K.C., and *Nigel Robinson* (*Morrish, Strode & Searle*, for *Hodgkinson and Beevor*, Newark).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

RENUNCIATION OF GIFT BY WILL TO CHARITY: SUBSEQUENT RETRACTION

***In re* Cranstoun, deceased: Gilby *v.* Home of Rest for Horses, and Others**

Romer, J. 22nd March, 1949

Adjourned summons.

By a will made in 1925, the testatrix devised a house on trust for sale and to pay the proceeds of sale to a charity known as "The Home of Rest for Horses," and, until sold, to permit the said home to have the use and occupation thereof. The testatrix died in 1929. The estate of the testatrix was in a rather confused state and it was uncertain whether the home would derive any benefit from the will. In January, 1931, the secretary of the home wrote to the surviving executor saying that the committee of the home decided to renounce all claim under the will. The surviving executor continued to administer the estate, but in 1935 he died intestate, leaving the estate partly unadministered. The secretary to the home was informed that the home could take out a grant of administration *de bonis non*, but in 1937 the committee again decided not to do so and again to renounce all claim under the will. In January, 1948, by an order of the Registrar of the Principal Probate Registry, the plaintiff, who was the present secretary of the home, was given liberty to retract the disclaimer of 1937, and took out letters of administration with the will annexed. The residue now amounted to some £4,000. The summons asked whether, if the home had renounced the benefits given to it by the will of the testatrix, it was entitled to retract its renunciation.

ROMER, J., said that the committee and former secretary of the home had misunderstood the position, believing that if they accepted the administration of the testatrix's estate they might be liable for debts of the testatrix beyond the value of her estate. It was argued that any renunciation was purely voluntary, and as it had not led any person to alter his position, it was open to the home to retract that renunciation at any time. His lordship thought that argument was well founded. Here, no one had altered his position in reliance on the renunciation, and even in the absence of authority he would have concluded that in those circumstances it was open to anyone who had renounced a legacy to change his mind at any time. But there was at least a *dictum* to support that view, for Swinfen-Eady, J., in *In re Young* [1913] 1 Ch. 272, observed that if a disclaimer had not been acted on it could be retracted. He held, therefore, that the home was entitled to claim the gift.

APPEARANCES: *G. Hewins* (*Jaques & Co.*, for *Rowe, Watts and Wood*, Ilfracombe); *W. Hunt*; *D. H. McMullen* (*Crawley, Arnold & Co.*); *H. O. Danckwerts* (*Treasury Solicitor*).

[Reported by H. LANGFORD LEWIS, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

INCOME TAX: MARKET GARDENER

Cross *v.* Emery (Inspector of Taxes)

Croom-Johnson, J. 1st February, 1949

Case Stated by Income Tax General Commissioners.

The appellant was the occupier of a nursery and an orchard, and the General Commissioners found that he was a market gardener and a fruit grower. Of his holding of 7½ acres, 3½ acres were cultivated and occupied as a nursery, the remainder being an orchard separated from the nursery by a field path. The market garden was found to be cultivated intensively, but the Commissioners made no such finding in respect of the orchard. The appellant's workmen were employed from time to time in the orchard or the market garden and nursery as required. The Commissioners held, on those facts, that the appellant carried on the business of a nurseryman and market gardener, and that his growing of fruit was "merely ancillary" to that business. By s. 10 (1) of the Finance Act, 1941, ". . . farming and market-gardening shall be treated as trades for the purposes of income tax and . . . the profits or gains thereof shall be charged under Case I of Sched. D" to the Income Tax Act, 1918, and "income tax shall not be charged under Sched. B in respect of . . . any farmland or market garden land." The appellant was accordingly assessed under Sched. D., and now appealed against the General Commissioners' confirmation of the assessment.

CROOM-JOHNSON, J., said that, if the Commissioners had simply said, on the evidence before them—in particular, the fact that the appellant's workmen worked sometimes in the nursery and sometimes in the orchard—that one trade, that of market gardening, was carried on in the whole 7½ acres, that would have been an end of the matter. What, however, did they mean by "ancillary"? They clearly did not mean that the fruit-growing was part of the market-gardening business. Ancillary meant subservient (see *Bomford* v. *Osborne* (1941), 57 T.L.R. 581; 23 T.C. 642, *per* Lord Maugham, at p. 691). The Commissioners had studiously refrained from saying that the fruit-growing was a part of the market-gardening business. It was argued for the Crown that he (his lordship) should find that the land as a whole was occupied as a market garden: but if he did that he would be usurping the functions of the Commissioners for whom it was to find that as a fact if they wished. On the facts as they had stated them, however, it was impossible to justify the finding that the fruit-growing was ancillary to the market gardening, and the result was that in respect of the orchard the appellant was assessable under Sched. B. *Bomford* v. *Osborne*, *supra*, showed that it was possible to subject the holding to the two separate assessments, and the case would be remitted to the Commissioners for them to assess the orchard under Sched. B. Appeal allowed.

APPEARANCES: *Graham-Dixon* (*Cunliffe & Airy*); *Donovan*, K.C., and *Hills* (*Solicitor of Inland Revenue*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

HIGHWAY: WALL IN PLACE OF LEVEL CROSSING

Law *v.* Chigwell Urban District Council and Others

Hallett, J. 21st March, 1949

Action.

A road in the area of Chigwell Urban District Council was crossed by a railway at a level crossing. The railway company constructed a subway under the track, with sloping approaches to it on each side, whereupon they were empowered under s. 31 (1) of the London and North Eastern Railway Act, 1938, to "stop up and discontinue so much of the road" as crossed the railway. By an agreement in writing made between the railway company and the urban district council in 1939 a scheme had been drawn up for construction of the subway and approaches, the work to be carried out by the county council, and the cost to be borne in prescribed proportions by the Minister of Transport, the railway company, the county council and the urban district council. The replacement of the level-crossing gates by walls completely blocking up the road on each side of the railway track was effected by the railway company after the Minister had certified under s. 31 (1) of the Act of 1938 that the subway had been constructed and was open to the public. Each wall was of red brick and, on the suggestion of the urban district council, two white courses were inserted in it to render it more clearly visible, and a row of red reflectors was inserted in one of those courses. On a dark night in October, 1945, when the gas lamps in the road were not alight, the plaintiff, who was riding his cycle, which was equipped with an electric light, collided with one of the walls and suffered severe injuries in respect of which he brought this action against the railway executive and the urban district council. (*Cur. adv. vult.*)

HALLETT, J., said that the decision in *Frost* v. *London and North Eastern Railway Company* (1945), not reported, that, where level-crossing gates were erected by a railway company under s. 47 of the Railways Clauses (Consolidation) Act, 1845, the company were under no liability to a person who, not seeing the gates because they were not lit, collided with them, was not applicable to a wall built by a railway company in substitution for the gates. The urban district council could not be made liable on the ground of absence of street lighting at the time of the accident since they were under no obligation to light the street.

In view of the absence of any obligation to light it, those responsible for the wall could also not excuse failure on their part to illuminate it on the ground that the street was lit. The railway company could not be rendered liable on the ground of having created a trap, since the plaintiff was aware of the existence of the wall. They could also not be rendered liable as occupiers owing a duty in respect of premises adjoining the highway (*Great Central Railway Company* v. *Hewlett* [1916] 2 A.C. 511). The railway company were liable, on the principle in *Geddis* v. *Bann Reservoir Proprietors* (1878), 3 App. Cas. 430, for negligently exercising their statutory power to erect the wall, in that they failed to take steps to make it visible at night either by lighting the wall itself or by painting it white. The urban district council were equally liable as having concurred in the construction, under statutory powers, of the wall. In particular, they were negligent in failing to place a street lamp near the wall as an extra precaution.

Judgment for the plaintiff for £667 16s., being the amount of his damages reduced by 50 per cent. on account of his contributory negligence.

APPEARANCES: *Beresford*, K.C., and *Springer* (*Hewitt, Woollacott & Chown*); *Nield*, K.C., and *Armstrong-Jones* (*Eric Coleby*); *Edgedale*, K.C., and *Schapiro* (*William Charles Crocker*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY

DIVISIONAL COURT

ADULTERY: NECESSITY FOR PARTICULARS

Duffield *v.* Duffield

Lord Merriman, P., and Ormerod, J. 17th March, 1949

Appeal from Grimsby justices.

The appellant wife applied under s. 6 of the Summary Jurisdiction (Married Women) Act, 1895, for a maintenance order on the ground of her husband's, the respondent's, desertion and wilful neglect to maintain her. When the summons was heard the husband made a charge of adultery against her, of which she had been given no notice. Moreover, neither the time, the place, nor the man alleged to be concerned was specified. The justices found the charge of adultery made out and accordingly dismissed the summons. The wife appealed.

LORD MERRIMAN, P.—ORMEROD, J., concurring—said that the wife's allegation of cruelty had been based on the husband's constant general and unspecified charges of adultery against her, which at the hearing he had not sought to justify. It was true that, when the charge of adultery was made before the justices, no application was made on behalf of the wife for an adjournment, nor were particulars asked for: but the obligation in such a case to give proper notice and particulars of the charge took precedence over any question of tactics in court. Lord Merrivale, P.'s remarks on this point in *Broadbent* v. *Broadbent* (1927), 43 T.L.R. 186, were applicable to any circumstances in which a charge of adultery might be made before justices. It was immaterial whether the charge was made on an application by a wife under s. 6, or on a husband's summons under s. 7 for the discharge of an existing order; no more serious charge could be made against a woman; and the weight and evidential value of such a finding against her by justices were fully recognised. Apart from such considerations, it was in accordance with natural justice that a woman should not be called on to face a charge of adultery without being told when and where and with whom she was being alleged to have committed it. It was of the utmost importance that, whenever a charge of adultery was going to be made, in whatever context, in summary proceedings full and proper particulars should be given. The evidence on which the justices had purported to act here was insufficient to found the charge of adultery.

Appeal allowed.

APPEARANCES: *J. R. T. Hooper* (*Peacock & Goddard*, for *E. D. Tyssen Drakes*, Grimsby); *Grieve* (*Hancock & Scott*, for *Wilkin & Chapman*, Grimsby).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

HERE AND THERE

RAISE YOUR GLASSES

A STRANGER would gather a somewhat exaggerated notion of the conviviality of the life of a Judge of Assize from the controversy of the wine glasses which have just tinkled their way into the consciousness of the appropriate committee in East Suffolk. A dozen goblets, a dozen claret glasses, a dozen port glasses and a dozen sherry glasses had been acquired at a cost of £49 4s. to brighten the board of the judge's lodging at Belstead House, Ipswich, and certain of those concerned, saturated perhaps in the Bentham-cum-Cripps spirit of utility and austerity, or feeling, maybe, that, as with his wig so with his glasses, the judge, at any rate, should not get them free, questioned the item. But from the chairman, Lord Cranbrook, came a noble plea for kindness to the embodiment of the King's Justice: "The judge carries a very heavy burden and we have a statutory obligation to make him comfortable." That, if we may say so, is the notion, and demonstrates a gratifying advance in local consciousness since 1926, when all that MacKinnon, J., could find to say of these parts was: "We went on to Ipswich, as dull and uninteresting a town as Norwich was bright and delightful. The Lodgings were an ugly villa on the Woodbridge Road." Just that. On the assurance that a sub-committee had "consulted a number of knowledgeable people and inspected great quantities of glassware," the glasses were passed. So the next judge of assize at Ipswich will not have to drink his claret out of a breakfast cup.

HOW THE JUDGES LODGE

AFTER all, the item will hardly recur for a considerable time, for in this twentieth century there are unlikely to be heavy glass-smashing orgies when the judge entertains. Articles of use and enjoyment tend to have long lifetimes at judge's lodgings and some time ago a bristleless clothes brush at Aylesbury was discovered to have seen service for no less than forty-one years. Gone are the great old days of unbridled expenditure, the hogsheads of port for the gentry, the barrels of strong beer for the javelin men, the tobacco and snuff for the prisoners, the music for the judge's lodgings, the sack, the sirloins and the capons. Nowadays, the Standing Joint Committee of Quarter Sessions and the county council, which concern themselves with judges' lodgings, rarely permit themselves the luxury of being lavish. A book has just appeared on "The English Interior 1500 to 1900," and the surprising thing is the author is not one of the judges of the King's Bench Division who, in their peregrinations up and down the country, must learn more about the English interior than anyone but an exceptionally well-informed architect, from the mediæval splendours of Durham Castle and the gracious Queen Anne House in St. Giles's, at Oxford, to the "vilest achievement of Victorian architecture" of which MacKinnon, J., that inveterate and outspoken critic on all matters of taste, once complained so bitterly in the visitors' book at Taunton. In his book he noted it again: "The style, of course, is Gothic: it is a house beyond description, the furniture was ghastly, the artificial lighting detestable. The County Council were at the time taking steps to remove the seat of county government from Weston-super-Mare to Taunton. I wondered if it was possible that they might convert this awful house into offices and house the Judge elsewhere. Clerks would be industrious in it, for they would shudder to let their gaze stray from their work . . . I need hardly say there was not a book in the house, except those I brought there." I believe that the shaft took effect—after a couple of years or so.

THE RED JUDGE

ON the operative side, the circuit system, often criticised but ever resilient, seems, in its green old age, to be equal to its task of carrying the King's justice far and wide throughout the southern half of this island. A dozen years ago the Peel Commission, their ears filled with its praises as sung before them at their sittings in Smith Square, had no major faults to find. "The great bulk of our evidence," they said, "strongly supported the retention of the county as the judicial unit." The objections to the establishment of district courts, they held, "are in our view decisive." So the Red Judge goes, and is likely to continue, his rounds and, though there may be trimmings and modifications here and there, the susceptibilities of county pride and the indefeasible rights of county criminals are unlikely to suffer any drastic violation just for the present. Apropos of provincial justice, it is interesting and sometimes perhaps a little disconcerting to see how often the unsuspecting advocate appearing at quarter sessions finds himself confronted with all the might and prestige of the Red Judge again, disguised, as it were, as his extra-judicial self, presiding as chairman. Lewis, J., in Pembrokeshire, Stable, J., in Merioneth, Birkett, J., in Buckinghamshire, are but a few.

RICHARD ROE.

SURVEY OF THE WEEK

HOUSE OF LORDS

A. Progress of Bills

Read First Time :—

Agricultural Marketing Bill [H.C.] [5th April.

Consolidation of Enactments (Procedure) Bill [H.L.] [7th April.

To facilitate the preparation of Bills for the purpose of consolidating the enactments relating to any subject.

People's Dispensary for Sick Animals Bill [H.C.] [6th April.

Read Second Time :—

Agriculture (Miscellaneous Provisions) Bill [H.C.] [7th April.

Clyde Navigation (Superannuation) Order Confirmation Bill [H.C.] [7th April.

To confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act, 1936, relating to Clyde Navigation (Superannuation) (to be proceeded with under s. 7 of the Act).

Consular Conventions Bill [H.C.] [5th April.

Lands Tribunal Bill [H.C.] [5th April.

Read Third Time :—

Grimsby Corporation Bill [H.L.] [7th April.

Special Roads Bill [H.C.] [7th April.

Wireless Telegraphy Bill [H.C.] [5th April.

B. Debates

On a motion for the approval of the Representation of the People (Northern Ireland) Regulations, 1949, Lord Simon pointed out that the right to vote in Parliamentary elections was conferred by the Representation of the People Act, 1948, upon British subjects and citizens of Eire. At the time that Act was passed Eire was a Dominion and its citizens owed allegiance to the Crown, but on Easter Monday that would cease to be true. After that date a citizen of Eire would be a citizen of an independent sovereign State. The result of this situation was that a citizen of a State owning no allegiance to the Crown would be able to vote, say in Belfast, to return a member to the Imperial Parliament. Fortunately, the Act provided for a decision to be made in the Northern Ireland county court as to who was a citizen of Ireland and from there an appeal lay to the Northern Ireland Court of Appeal. Lord Swinton said that the Regulations were merely machinery. The right to vote was conferred by the Act, and if it was desired to alter it that could only be done by an amending Act of Parliament. The Lord Chancellor said that a citizen of Eire was still clearly a citizen of Eire even though Eire might become a republic. A Bill would shortly be introduced dealing with the Irish situation and the matter could more properly be dealt with then. [5th April.

In moving the second reading of the Lands Tribunal Bill, the Lord Chancellor said that the whole basis of the code which the arbitrators had had to administer had been altered by the Town and Country Planning Act, 1947. The additional complexities rendered it necessary to have legally qualified tribunals. The aim would be a single and consistent jurisdiction with a simple procedure. The provisions would be elastic so as to permit variation in the composition of the tribunal varying with the type of dispute with which it had to deal. The services of first-class men would be obtained at adequate salaries and for the first time power was taken to pay pensions. The functions of any statutory tribunal could be transferred to the tribunal by Order in Council but it was forbidden to transfer to it any of the functions of a court of law. Lord Simon regretted that the tribunal did not take power to decide appeals from the fixing of development charges by the Central Land Board. In replying to the debate, the Lord Chancellor said that the question of an appeal from the Central Land Board had been decided in the debates on the Town and Country Planning Act and he could not alter a major issue by the present Bill, which dealt merely with machinery and could not give a right of appeal where none existed before. He could not say how many persons would be appointed to the tribunal, but the number would be kept as low as possible to secure homogeneity and uniformity of decision. [5th April.

HOUSE OF COMMONS

A. Progress of Bills

Read Second Time :—

Agricultural Wages (Scotland) Bill [H.L.] [4th April.

Read Third Time :—

Wandsworth and District Gas Bill [H.L.] [4th April.

B. Questions

Mr. Bevan stated that he hoped the Report of the Local Government Boundary Commission would be published in the next few weeks. [5th April.

Mr. Strachey said that a first draft of revised model by-laws under the provisions of s. 15 of the Food and Drugs Act, 1938, was ready last July, but it was then necessary to consult the associations of interested persons. A second draft was now being prepared and the work would be concluded as quickly as possible. Local authorities, if they wished, could meanwhile submit for approval by-laws made on the old model. [5th April.

In reply to a question as to whether persons who consumed rationed food illegally supplied were liable to prosecution in the same way as hotels and shopkeepers who provided it, Mr. Strachey said they were not. [4th April.

The Attorney-General stated that the Lord Chancellor was reluctant to appoint persons as justices of the peace for the first time if they had reached the age of sixty, except where they possessed special legal qualifications. [4th April.

Mr. Chuter Ede said he had received the Report of the Joint Committee on Psychiatry and the Law which was set up by the British Medical Association and the Magistrates' Association, and it was under consideration. [1st April.

The Attorney-General said that it was the right of a private individual to institute proceedings for contempt of court, if he was so advised. The Director of Public Prosecutions was always ready to consider action in cases which were brought to his notice or of which he became aware. Under the Prosecution of Offences Act, 1908, the Director could take over the conduct of criminal proceedings initiated by a private prosecutor. Assuming that, as he considered was the case, proceedings for contempt were within that Act, the Director would in a proper case be entitled to take them over. Discretion had, however, to be exercised, especially where the contempt proceedings would attract further publicity to an accused person. [4th April.

Mr. Blenkinsop said that the Minister of Health was aware that in the case of a dwelling-house which would otherwise be controlled under the Rent Acts but in respect of which a rental of less than two-thirds of the rateable value was payable, a tenant or assignee could be charged a premium of any amount by the landlord or assignor no matter how short the term of the tenancy, but the Minister was not satisfied that legislation on the matter was desirable. [6th April.

STATUTORY INSTRUMENTS

Control of Iron and Steel (No. 69) Order, 1949 (S.I. 1949 No. 572).

Control of Bolts, Nuts, etc. (No. 17) Order, 1949 (S.I. 1949 No. 573).

National Health Service (General Medical and Pharmaceutical Service) Amendment Regulations, 1949.

These regulations make special provision for the remuneration of doctors for the financial year ending 31st March, 1949, provide for the choice of a doctor or chemist on behalf of persons detained in approved schools, and make further minor amendments of the National Health Service (General Medical and Pharmaceutical Services) Regulations, 1948.

National Health Service (Local Health Authorities) Estimation of Expenditure Regulations, 1949 (S.I. 1949 No. 578).

These regulations prescribe the method of estimating the expenditure incurred by local health authorities on which Exchequer grant is payable.

Exchange Control (Bankruptcy Notices) Order, 1949 (S.I. 1949 No. 585).

See *ante*, p. 226, as to this order.

Electric Lighting (Restriction) Order, 1949 (S.I. 1949 No. 633)

This order permits the use of electric signs, but places restrictions on their use during the winter between 7 a.m. and 7 p.m.

It also places restrictions on the wattage of lamps used in shops, hotels, places of entertainment, etc., similar to those previously in force.

Weights and Measures (Board of Trade Standard 0·25 Metric Carat) Order, 1949 (S.I. 1949 No. 591).

Industrial Assurance and Friendly Societies Act, 1948 (Northern Ireland) Order, 1949 (S.I. 1949 No. 598).

Injuries in War (Compensation) (Persons afloat under Admiralty) Amendment Order, 1949 (S.I. 1949 No. 599).

Maintenance Orders (Facilities for Enforcement) (Ontario) Order in Council, 1949 (S.I. 1949 No. 602).

This order extends to Ontario the provisions of the Maintenance Orders (Facilities for Enforcement) Act, 1920.

Railway and Canal Commission (Abolition) Act, 1949 (Commencement) Order, 1949 (S.I. 1949 No. 603).

This order brought the Act into force on 1st April, 1949.

Trading with the Enemy (Authorisation) (Germany) Order, 1949 (S.I. 1949 No. 605).

Trading with the Enemy (Transfer of Negotiable Instruments, etc.) (Germany) Order, 1949 (S.I. 1949 No. 608).

Trading with the Enemy (Custodian) (Amendment) (Germany) Order, 1949 (S.I. 1949 No. 607).

The above three orders permit trading with Germany, sanction transfer of negotiable instruments, etc., to German nationals, and remove Board of Trade and Custodian control over money and property accruing in consequence of the authorisation of trade.

Post Office (Execution of Documents) (Amendment) Warrant, 1949 (S.I. 1949 No. 611).

This order increases the amounts in value up to which certain officers of the Post Office may sign or execute certain contracts and other documents.

Essential Work and Registration (Miscellaneous Orders) (Revocation) Order, 1949 (S.I. 1949 No. 642).

Criminal Justice Act, 1948 (Adaptation of Naval Discipline Act) Order, 1949 (S.I. 1949 No. 597).

This order specifies the modifications of the Naval Discipline Act considered necessary in consequence of the coming into effect of ss. 1, 2 and 73 of the Criminal Justice Act, 1948.

National Insurance (Reciprocal Agreement with Eire for Unemployment Benefit) Order, 1949 (S.I. 1949 No. 601).

Teachers Registration Council Revoking Order, 1949 (S.I. 1949 No. 604).

Courts Martial (Abolition of Penal Servitude and Hard Labour) Order, 1949 (S.I. 1949 No. 615).

Local Government Superannuation (Transfer Value) (Amendment) Regulations, 1949 (S.I. 1949 No. 629).

Superannuation (Local Act Authorities Scheme) Interchange Rules, 1949 (S.I. 1949 No. 630).

Local Government Superannuation (England and Scotland) (Amendment) Regulations, 1949 (S.I. 1949 No. 631).

National Insurance (Modification of Local Government Superannuation Schemes) (Amendment) Regulations, 1949 (S.I. 1949 No. 632).

BOOKS RECEIVED

Motor Insurance. By G. W. GILBERT, Solicitor. Third Edition. 1949. pp. xvi and (with Index) 372. London: Sir Isaac Pitman & Sons, Ltd. 20s. net.

Burke's Loose-Leaf War Legislation. Edited by H. PARRISH, Barrister-at-Law. 1948–49 Vol., Pts. 1 and 2. London: Hamish Hamilton (Law Books), Ltd.

Essentials of Magisterial Law. By C. B. V. HEAD, LL.B., Solicitor of the Supreme Court. 1949. pp. xxii and (with Index) 543. London: Winchester Publications, Ltd. 35s. net.

An Index to the Law Quarterly Review, Vols. 1 to 64. By T. A. BLANCO WHITE, of Lincoln's Inn, Barrister-at-Law. 1949. pp. xv and 286. London: Stevens & Sons, Ltd. 25s. net.

Oyez Practice Notes, No. 12: Naturalisation and other Methods of Acquiring British Nationality. By J. F. JOSLING, Solicitor of the Supreme Court. 1949. pp. 78. London: The Solicitors' Law Stationery Society, Ltd. 6s. net.

The date of admission of Mr. I. H. K. Thorne was wrongly stated in our issue of last week (see *ante*, p. 240) as 1902. This should read 1942.

NOTES AND NEWS

Honours and Appointments

The King has approved the appointment of Mr. ADEODATO ANTHONY PEREIRA as a metropolitan magistrate in succession to Mr. R. A. Powell, who has resigned. Mr. Pereira has been stipendiary magistrate for East and West Ham since 1946.

Mr. C. H. SCOTT, of the firm of Slaughter & May, City solicitors, a director of the interim National Film Finance Company formed last October, has been appointed to the new National Film Finance Corporation, which is under the chairmanship of Lord Reith.

Mr. P. GILBERT, solicitor to the Sheffield and District Gas Company for the past thirteen years, has been appointed legal assistant to the East Midland Gas Board.

Mr. G. GODFREY PHILLIPS, C.B.E., of Messrs. Linklaters and Paines, solicitors, of Cannon Street, E.C.4, has been appointed a director of the Equity and Law Life Assurance Society.

Personal Notes

Miss Christian J. Bisset, Senior Town Clerk Depute of Dundee, will act as Town Clerk for the next month.

Mr. George Turnbull, solicitor, was married on 24th March, at Leeds, to Miss Margaret Longworth Charlton.

Mr. W. H. Whitehead, Under-Sheriff of Kent and solicitor of Maidstone, has been presented with a fountain pen as a token of appreciation of his forty years' service as a member of Bearsted Parish Council.

Miscellaneous

A double taxation convention between the United Kingdom and Sweden was signed in London, on 30th March. The convention, which is subject to ratification, provides for avoidance of double taxation on income and profits and is expressed to take effect from 6th April, 1949. The convention is in general similar to those already made with the United States of America, the Netherlands and certain Commonwealth countries. Full texts will be published shortly.

SOCIETIES

The President of The Law Society is bringing the claims of the SOLICITORS' BENEVOLENT ASSOCIATION before all newly admitted solicitors, and already fifteen have responded to his appeal and have become members. At the board meeting, held on 6th April, 1949, £3,935 was granted in relief to thirty-eight beneficiaries and of this amount £1,704 was for solicitors (or their dependants) who have practised in London. Further information and a copy of the last Annual Report may be obtained from the Secretary of the Solicitors' Benevolent Association, at 12 Clifford's Inn, E.C.4.

OBITUARY

MR. R. COLES

Mr. Royce Coles, for many years a solicitor in Hereford, died recently, aged 75. He was admitted in 1908.

MR. W. WEST

Mr. Walter West, solicitor, of Grimsby, died on 19th March, aged 67. He was admitted in 1904.

MR. R. K. WHITAKER

Mr. Robert Kidd Whitaker, solicitor, of Accrington, died on 18th March, aged 81. Mr. Whitaker was in the sixtieth year of his practice as a solicitor in Accrington. He qualified and was admitted in 1888, at the age of twenty, but was unable to start practising until the next year, at the earliest permissible age.

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